

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

A.H. by and through G.H. and L.C., both
individually, and on behalf of the
MICROSOFT CORPORATION WELFARE
PLAN, and on behalf of similarly situated
individuals and plans,

Plaintiff,

v.

MICROSOFT CORPORATION WELFARE
PLAN; and MICROSOFT CORPORATION,

Defendants.

No. C17-01889 JCC

DEFENDANTS' ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFF'S AMENDED
COMPLAINT

Defendants Microsoft Corporation Welfare Plan and Microsoft Corporation ("Microsoft Defendants") hereby answer and respond to Plaintiff's Amended Complaint. Except as expressly admitted, the Microsoft Defendants deny all of the allegations contained in the Amended Complaint. For ease of reference only, the capitalized terms used herein shall be used in the same manner as they are in the Amended Complaint. The Microsoft Defendants deny all allegations in the Amended Complaint, whether express or implied, that are not specifically admitted below. Any factual allegation below is admitted only as to the specific admitted facts, not as to any purported conclusions, characterizations, implications or speculations that arguably

1 follow from the admitted facts. The Microsoft Defendants deny that Plaintiff is entitled to the
2 relief requested or any other relief.

3 ANSWER

4 AS TO "INTRODUCTION"

5 1. This introduction is Plaintiff's characterization of this action, which is a legal
6 proposition to which no response is required. The Microsoft Defendants lack knowledge or
7 information sufficient to admit or deny Plaintiff's allegation in the first sentence of Paragraph 1
8 and therefore deny the allegation on this basis. As to the second sentence, the Microsoft
9 Defendants admit that A.H. submitted claims for services purportedly provided by Wingate. The
10 Microsoft Defendants lack knowledge or information sufficient to admit or deny the remaining
11 allegations in the second sentence of Paragraph 1 and therefore deny the allegations on this basis.
12 The third through sixth sentences of Paragraph 1, in their entirety, also purport to characterize
13 documents, the contents of which speak for themselves, and assert legal conclusions to which no
14 responses are required. The Microsoft Defendants deny the allegations contained in the last
15 sentence of Paragraph 1. To the extent there are any additional factual allegations in the
16 introduction, the Microsoft Defendants deny them.

17 2. This introduction is Plaintiff's characterization of this action, which is a legal
18 proposition to which no response is required. To the extent the allegations contained in this
19 paragraph relate solely to claims that have been dismissed (*e.g.*, Parity Act claims), no response
20 is required. As to the second and third sentences of Paragraph 2, the Microsoft Defendants admit
21 that Plaintiff's Plan does not cover wilderness program tuition or other program-related fees, but
22 that it does cover therapy and other treatment by licensed professionals when provided during a
23 wilderness program. To the extent there are any other factual allegations in the introduction, the
24 Microsoft Defendants deny them.

25 3. This introduction is Plaintiff's characterization of this action, which is a legal
26 proposition to which no response is required. To the extent the allegations contained in this
27 paragraph relate solely to claims that have been dismissed (*e.g.*, Affordable Care Act claims), no
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1 response is required. To the extent there are any factual allegations in the introduction, the
2 Microsoft Defendants deny them.

3 4. This introduction is Plaintiffs' characterization of this action, which is a legal
4 proposition to which no response is required. To the extent the allegations contained in this
5 paragraph relate solely to claims that have been dismissed, no response is required. To the extent
6 there are any factual allegations in the introduction, the Microsoft Defendants deny them. The
7 Microsoft Defendants further deny that Plaintiff or any putative class is entitled to any of the
8 relief requested.

9 AS TO "PARTIES"

10 5. The Microsoft Defendants admit that A.H. is currently enrolled as a beneficiary,
11 as a dependent of L.C., in the Microsoft Corporation Welfare Plan ("Plan") under the "Health
12 Savings Plan (Premera)" provisions of the Plan. Plaintiff asserts a legal conclusion in the second
13 sentence of Paragraph 5, to which no response is required. Except as otherwise admitted or
14 responded to herein, the Microsoft Defendants lack information as to the remaining allegations in
15 Paragraph 5 and therefore deny them on that basis.

16 6. Plaintiff asserts legal conclusions in the first, second, fourth, and fifth sentences
17 of Paragraph 6, to which no response is required. The Microsoft Defendants admit the
18 allegations in the third sentence of Paragraph 6. The sixth sentence of Paragraph 6 purports to
19 characterize terminology used in the Amended Complaint, and therefore no response is required.
20 The seventh sentence of Paragraph 6 purports, in its entirety, to characterize documents, which
21 speak for themselves, and therefore no response is required. The final sentence of Paragraph 6
22 asserts legal conclusions to which no responses are required. Except as otherwise admitted or
23 responded to herein, the Microsoft Defendants otherwise deny any remaining allegations in
24 Paragraph 6.

25 7. The first, fourth, and fifth sentences of Paragraph 7, in their entirety, purport to
26 characterize documents, the contents of which speak for themselves, and assert legal conclusions
27 to which no responses are required. The Microsoft Defendants admit the allegations in the
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1 second sentence of Paragraph 7. The third sentence of Paragraph 7 purports to characterize
 2 terminology used in this Amended Complaint, and therefore no response is required. As to the
 3 fourth sentence of Paragraph 7, the Microsoft Defendants admit that the Plan confers
 4 discretionary authority on Microsoft.

5 **AS TO “JURISDICTION AND VENUE”**

6 8. Paragraph 8 asserts, in its entirety, legal conclusions to which no responses are
 7 required.

8 9. Paragraph 9 asserts, in its entirety, legal conclusions to which no responses are
 9 required.

10 10. The Microsoft Defendants lack sufficient knowledge to admit or deny the
 11 allegations in Paragraph 10, and therefore deny them on that basis.

12 **AS TO “FACTS”**

13 11. The Microsoft Defendants admit that A.H. is enrolled as a beneficiary, as a
 14 dependent of L.C., in the Plan. Plaintiff asserts a legal conclusion in Paragraph 11, to which no
 15 response is required.

16 12. The Microsoft Defendants admit that A.H. submitted claims for services
 17 purportedly provided by Wingate beginning on February 2, 2016. The Microsoft Defendants
 18 lack sufficient knowledge to admit or deny the remaining allegations in Paragraph 12 and
 19 therefore deny them on this basis.

20 13. The first sentence of Paragraph 13 purports, in its entirety, to characterize
 21 documents, which speak for themselves, and therefore no response is required. The second
 22 sentence of Paragraph 13 purports, in its entirety, to characterize regulations, and therefore no
 23 response is required. To the extent a further response is required, the Microsoft Defendants deny
 24 the allegations in the second sentence of Paragraph 13.

25 14. Paragraph 14, in its entirety, asserts legal conclusions and purports to characterize
 26 a statute, and therefore no response is required. To the extent a further response is required, the
 27 Microsoft Defendants deny any allegation in Paragraph 14.

1 15. The first sentence of Paragraph 15 asserts, in its entirety, legal conclusions to
2 which no responses are required. To the extent a further response is required, the Microsoft
3 Defendants deny the allegations in the first sentence of Paragraph 15. The Microsoft Defendants
4 lack sufficient knowledge to admit or deny the remaining allegations in Paragraph 15 and
5 therefore deny them on this basis.

6 16. The Microsoft Defendants admit that A.H. was a minor during the time period
7 when he submitted claims for services purportedly provided by Wingate from February 2, 2016
8 to April 11, 2016. The Microsoft Defendants deny the remaining allegations in Paragraph 16.

9 17. Paragraph 17 purports, in its entirety, to characterize documents, which speak for
10 themselves, and therefore no response is required.

11 18. Paragraph 18, in its entirety, purports to characterize documents, the contents of
12 which speak for themselves, and asserts legal conclusions to which no responses are required.

13 19. Paragraph 19, in its entirety, purports to characterize documents, the contents of
14 which speak for themselves, and asserts legal conclusions to which no responses are required.

15 20. Paragraph 20 purports, in its entirety, to characterize documents, which speak for
16 themselves, and therefore no response is required.

17 21. Paragraph 21 purports, in its entirety, to characterize documents, which speak for
18 themselves, and therefore no response is required.

19 22. Paragraph 22, in its entirety, purports to characterize regulations and documents,
20 the contents of which speak for themselves, and asserts legal conclusions to which no responses
21 are required.

22 23. The first sentence of Paragraph 23, in its entirety, purports to characterize
23 documents, the contents of which speak for themselves, and asserts legal conclusions to which
24 no responses are required. The second sentence of Paragraph 23 asserts, in its entirety, legal
25 conclusions to which no responses are required. To the extent a further response is required, the
26 Microsoft Defendants deny any allegations in Paragraph 23.

1 24. The first sentence of Paragraph 24, in its entirety, purports to characterize
2 documents, the contents of which speak for themselves, and asserts legal conclusions to which
3 no responses are required. The second sentence of Paragraph 24 asserts legal conclusions to
4 which no responses are required.

5 25. The Microsoft Defendants admit that, as the claims administrator for the Plan,
6 Premera Blue Cross (“Premera”) denied A.H.’s requests for coverage for a wilderness program
7 based on the quoted exclusion. Except as otherwise responded to herein, the Microsoft
8 Defendants deny any remaining allegations in Paragraph 25.

9 26. The Microsoft Defendants deny the allegations in Paragraph 26.

10 27. The Microsoft Defendants deny the allegations in Paragraph 27.

11 28. The Microsoft Defendants deny the allegations in Paragraph 28.

12 29. The allegations contained in Paragraph 29 relate solely to claims, theories or facts
13 dismissed by the Court, and assert legal conclusions to which no responses are required.

14 30. The allegations contained in Paragraph 30 relate solely to claims, theories or facts
15 dismissed by the Court, and assert, in their entirety, legal conclusions to which no responses are
16 required.

17 31. The allegations contained in Paragraph 31, in their entirety, relate solely to
18 claims, theories or facts dismissed by the Court, purport to characterize documents, the contents
19 of which speak for themselves, and assert legal conclusions to which no responses are required.

20 32. The allegations contained in Paragraph 32, in their entirety, relate solely to
21 claims, theories or facts dismissed by the Court, and purport to characterize documents, the
22 contents of which speak for themselves, and therefore no response is required.

23 33. The allegations contained in Paragraph 33 relate solely to claims, theories or facts
24 dismissed by the Court, and assert legal conclusions to which no responses are required. The
25 Microsoft Defendants admit that certain claims submitted by wilderness programs are not
26 covered under the Plan. The Microsoft Defendants deny that wilderness programs are a form of
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1 intermediate care. Except as otherwise responded to herein, the Microsoft Defendants deny any
2 remaining allegations in Paragraph 33.

3 34. The allegations contained in Paragraph 34 relate solely to claims, theories or facts
4 dismissed by the Court, and assert, in their entirety, legal conclusions to which no responses are
5 required. To the extent a further response is required, the Microsoft Defendants deny any
6 allegations in Paragraph 34.

7 35. The first sentence of Paragraph 35 contains allegations related solely to claims,
8 theories or facts dismissed by the Court, and asserts, in its entirety, legal conclusions to which no
9 responses are required. To the extent a further response is required, the Microsoft Defendants
10 deny the allegation in the first sentence of Paragraph 35. The Microsoft Defendants lack
11 knowledge or information sufficient to admit or deny Plaintiff's allegations in the second and
12 third sentences of Paragraph 35, and therefore deny the allegations on this basis.

13 36. The allegations contained in Paragraph 36 relate solely to claims, theories or facts
14 dismissed by the Court, and assert, in their entirety, legal conclusions to which no responses are
15 required. To the extent a further response is required, the Microsoft Defendants deny any
16 allegations in Paragraph 36.

17 37. The first sentence of Paragraph 37 asserts, in its entirety, a legal conclusion, to
18 which no response is required. The remainder of Paragraph 37 purports to characterize
19 documents, the contents of which speak for themselves and asserts legal conclusions to which no
20 responses are required. To the extent a further response is required, the Microsoft Defendants
21 deny any allegations in Paragraph 37.

22 38. The allegations contained in Paragraph 38 relate solely to claims, theories or facts
23 dismissed by the Court, and assert, in their entirety, legal conclusions to which no responses are
24 required. To the extent a further response is required, the Microsoft Defendants deny any
25 allegations in Paragraph 38.

26 39. Paragraph 39 purports to characterize documents, the contents of which speak for
27 themselves and asserts legal conclusions, to which no responses are required. The Microsoft
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1 Defendants admit that A.H. appealed the denial of coverage of claims for services purportedly
2 provided by Wingate. Except as otherwise responded to herein, the Microsoft Defendants deny
3 any remaining allegations in Paragraph 39.

4 40. The Microsoft Defendants admit that A.H.'s appeal was denied, as stated in the
5 attached copy of the appeal denial letter, the contents of which speak for themselves. To the
6 extent a further response is required, the Microsoft Defendants deny any allegation in Paragraph
7 40.

8 41. Paragraph 41, in its entirety, purports to characterize regulations and documents,
9 the contents of which speak for themselves, and asserts legal conclusions to which no responses
10 are required.

11 42. Paragraph 42 purports, in its entirety, to characterize documents, which speak for
12 themselves, and therefore no response is required.

13 43. Paragraph 43 purports to characterize documents, the contents of which speak for
14 themselves, and asserts legal conclusions to which no responses are required. The Microsoft
15 Defendants deny the allegations in the fourth sentence of Paragraph of 43 and, except as
16 otherwise responded to herein, deny any remaining allegations in Paragraph 43.

17 44. Paragraph 44 purports to characterize documents, the contents of which speak for
18 themselves, and asserts legal conclusions to which no responses are required. The Microsoft
19 Defendants deny the allegations in the third sentence of Paragraph of 44 and, except as otherwise
20 responded to herein, deny any remaining allegations in Paragraph 44.

21 45. Paragraph 45 purports, in its entirety, to characterize documents, which speak for
22 themselves, and therefore no response is required. To the extent a further response is required,
23 the Microsoft Defendants deny any allegations in Paragraph 45.

24 46. Paragraph 46, in its entirety, purports to characterize this Amended Complaint
25 and documents, the contents of which speak for themselves, and asserts legal conclusions to
26 which no responses are required. To the extent a further response is required, the Microsoft
27 Defendants deny any allegations in Paragraph 46.

1 47. The Microsoft Defendants admit that Plaintiff completed the steps in the internal
2 appeal process that were provided under the Plan. Paragraph 47 also asserts legal conclusions to
3 which no responses are required. Except as otherwise admitted or responded to herein, the
4 Microsoft Defendants deny the remaining allegations in Paragraph 47.

5 48. The Microsoft Defendants lack knowledge or information sufficient to admit or
6 deny Plaintiff's allegation in Paragraph 48, and therefore deny the allegation on this basis.

7 **AS TO "CLASS ALLEGATIONS"**

8 49. Paragraph 49, in its entirety, asserts legal conclusions and purports to characterize
9 this action, and therefore no response is required. To the extent a further response is required,
10 the Microsoft Defendants deny any allegations in Paragraph 49.

11 50. Paragraph 50, in its entirety, asserts legal conclusions and purports to characterize
12 this action, and therefore no response is required. To the extent a further response is required,
13 the Microsoft Defendants deny any allegations in Paragraph 50.

14 51. The Microsoft Defendants admit that A.H. is an enrollee in the Plan. The
15 Microsoft Defendants also admit that A.H.'s requests for coverage for his participation in a
16 wilderness program were denied on the basis of a plan exclusion. The Microsoft Defendants
17 lack sufficient knowledge to admit or deny the allegations in the second and third sentences of
18 Paragraph 51 and therefore denies them on this basis. Sentence six of Paragraph 51 asserts legal
19 conclusions to which no response is required. Except as otherwise responded to herein, the
20 Microsoft Defendants deny any remaining allegations in Paragraph 51.

21 52. Paragraph 52, in its entirety, asserts legal conclusions and purports to characterize
22 this action, and therefore no response is required. To the extent the allegations contained in this
23 paragraph relate solely to claims that have been dismissed, no response is required. To the extent
24 a further response is required, the Microsoft Defendants deny any allegations in Paragraph 52.

25 53. Paragraph 53, in its entirety, asserts legal conclusions and purports to characterize
26 this action, and therefore no response is required. To the extent a further response is required,
27 the Microsoft Defendants deny any allegations in Paragraph 53.

54. Paragraph 54, in its entirety, asserts legal conclusions and purports to characterize this action, and therefore no response is required. To the extent a further response is required, the Microsoft Defendants deny any allegations in Paragraph 54.

55. Paragraph 55, in its entirety, asserts legal conclusions and purports to characterize this action, and therefore no response is required. To the extent a further response is required, the Microsoft Defendants deny any allegations in Paragraph 55.

56. The Microsoft Defendants lack knowledge or information sufficient to admit or deny Plaintiff's allegation in Paragraph 56, and therefore deny the allegation on this basis.

AS TO "LEGAL CLAIMS"

FIRST CLAIM: CLAIM FOR RECOVERY OF BENEFITS, CLARIFICATION OF RIGHTS UNDER TERMS OF THE PLAN DUE TO EXCLUSION OF WILDERNESS PROGRAMS EVEN WHERE THE PROVIDER IS AN "ELIGIBLE PROVIDER" UNDER THE TERMS OF THE PLAN ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)

57. Answering Paragraph 57, the Microsoft Defendants incorporate by reference their answers to Paragraphs 1 through 56 inclusive.

58. Paragraph 58 purports, in its entirety, to characterize a statute, and therefore no response is required.

59. The first sentence of Paragraph 59 purports, in its entirety, to characterize documents, which speak for themselves, and therefore no response is required. The Microsoft Defendants deny the allegations in the second sentence of Paragraph 59.

60. The first sentence of Paragraph 60 purports, in its entirety, to characterize documents, which speak for themselves, and therefore no response is required. The Microsoft Defendants deny the allegations in the second sentence of Paragraph 60.

61. Paragraph 61 purports, in its entirety, to characterize documents, which speak for themselves, and therefore no response is required.

62. The Microsoft Defendants admit that coverage of A.H.'s participation at Wingate was denied on the ground that wilderness programs are not covered under the Plan. Except as

1 otherwise admitted or responded to herein, the Microsoft Defendants otherwise deny any
 2 remaining allegations in Paragraph 62.

3 63. The Microsoft Defendants deny the allegations in Paragraph 63.

4 64. The allegations contained in Paragraph 64 assert legal conclusions to which no
 5 responses are required. To the extent a further response is required, the Microsoft Defendants
 6 deny any allegations in Paragraph 64.

7 65. The Microsoft Defendants deny the allegations in Paragraph 65.

8 66. The Microsoft Defendants deny the allegations in Paragraph 66 and further deny
 9 that Plaintiff or any putative class is entitled to any of the relief requested.

10 **SECOND CLAIM:**
 11 **BREACH OF FIDUCIARY DUTIES DUE TO DEFENDANTS' UNIFORM**
 12 **EXCLUSION OF WILDERNESS PROGRAMS WHEN PROVIDED BY**
ELIGIBLE PROVIDERS ERISA §§ 404(a)(1), 502(a)(2); 29 U.S.C. §§ 1104(a),
1132(a)(2)

13 67. Answering Paragraph 67, the Microsoft Defendants incorporate by reference their
 14 answers to Paragraphs 1 through 67 inclusive.

15 68. The allegations contained in Paragraph 68 relate solely to claims, theories or facts
 16 dismissed by the Court, to which no responses are required. Paragraph 68 also asserts, in its
 17 entirety, legal conclusions to which no responses are required.

18 69. The allegations contained in Paragraph 69 relate solely to claims, theories or facts
 19 dismissed by the Court, to which no responses are required. Paragraph 69 also asserts, in its
 20 entirety, legal conclusions to which no response is required.

21 70. The allegations contained in Paragraph 70 relate solely to claims, theories or facts
 22 dismissed by the Court, to which no responses are required. Paragraph 70 also purports, in its
 23 entirety, to characterize a statute, and therefore no response is required.

24 71. The allegations contained in Paragraph 71 relate solely to claims, theories or facts
 25 dismissed by the Court, to which no responses are required. Paragraph 71 also asserts, in its
 26 entirety, legal conclusions to which no responses are required.

72. The allegations contained in Paragraph 72 relate solely to claims, theories or facts dismissed by the Court, to which no responses are required. Paragraph 72 also asserts, in its entirety, legal conclusions to which no responses are required.

73. The allegations contained in Paragraph 73 relate solely to claims, theories or facts dismissed by the Court, to which no responses are required. Paragraph 73 also purports, in its entirety, to characterize this action, and therefore no response is required.

**THIRD CLAIM:
CLAIM FOR RECOVERY OF BENEFITS, CLARIFICATION OF RIGHTS
UNDER TERMS OF THE PLANS AND BREACH OF FIDUCIARY DUTY
REMEDIES DUE TO DEFENDANTS' FAILURE TO COMPLY WITH THE
FEDERAL MENTAL HEALTH PARITY ACT AND/OR THE NON
DISCRIMINATION PROVISIONS OF THE ACA
ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)
AND
ERISA §§ 404(a)(1), 502(a)(2); 29 U.S.C. §§ 1104(a), 1132(a)(2)**

74. Answering Paragraph 74, the Microsoft Defendants incorporate by reference their answers to Paragraphs 1 through 73 inclusive.

75. The allegations contained in Paragraph 75 relate solely to claims, theories or facts dismissed by the Court, to which no responses are required. Paragraph 75 also purports, in its entirety, to characterize this Amended Complaint, and therefore no response is required.

76. The allegations contained in Paragraph 76 relate solely to claims, theories or facts dismissed by the Court, to which no responses are required. Paragraph 76 also purports, in its entirety, to characterize a statute, and therefore no response is required.

77. The allegations contained in Paragraph 77 relate solely to claims, theories or facts dismissed by the Court, to which no responses are required. Paragraph 77 also purports, in its entirety, to characterize regulations, which speak for themselves, and therefore no response is required.

78. The allegations contained in Paragraph 78 relate solely to claims, theories or facts dismissed by the Court, to which no responses are required. Paragraph 78 also asserts, in its entirety, legal conclusions to which no responses are required.

1 79. The allegations contained in Paragraph 79 relate solely to claims, theories or facts
2 dismissed by the Court, to which no responses are required. Paragraph 79 also purports, in its
3 entirety, to characterize regulations, which speak for themselves, and therefore no response is
4 required.

5 80. The allegations contained in Paragraph 80 relate solely to claims, theories or facts
6 dismissed by the Court, to which no responses are required. Paragraph 80 also purports, in its
7 entirety, to characterize regulations, which speak for themselves, and therefore no response is
8 required.

9 81. The allegations contained in Paragraph 81 relate solely to claims, theories or facts
10 dismissed by the Court, to which no responses are required. Paragraph 80, in its entirety, also
11 purports to characterize regulations, which speak for themselves, and asserts legal conclusions to
12 which no responses are required.

13 82. The allegations contained in Paragraph 82 relate solely to claims, theories or facts
14 dismissed by the Court, to which no responses are required. Paragraph 82, in its entirety, also
15 purports to characterize documents, the contents of which speak for themselves, and asserts legal
16 conclusions to which no responses are required.

17 83. The allegations contained in Paragraph 83 relate solely to claims, theories or facts
18 dismissed by the Court, to which no responses are required. Paragraph 83 also asserts, in its
19 entirety, legal conclusions to which no responses are required.

20 84. The allegations contained in Paragraph 84 relate solely to claims, theories or facts
21 dismissed by the Court, to which no responses are required. Paragraph 84 also purports, in its
22 entirety, to characterize a statute, and therefore no response is required.

23 85. The allegations contained in Paragraph 85 relate solely to claims, theories or facts
24 dismissed by the Court, to which no responses are required. Paragraph 85 also asserts, in its
25 entirety, legal conclusions to which no responses are required.

26 86. The allegations contained in Paragraph 86 relate solely to claims, theories or facts
27 dismissed by the Court, to which no responses are required. Paragraph 86 also asserts, in its
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entirety, legal conclusions to which no responses are required. The Microsoft Defendants deny that Plaintiff or any putative class is entitled to any of the relief requested.

**FOURTH CLAIM:
CLAIM TO OBTAIN OTHER EQUITABLE RELIEF AND TO ENFORCE
THE TERMS OF THE PLANS
ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3)**

87. Answering Paragraph 87, the Microsoft Defendants incorporate by reference their answers to Paragraphs 1 through 86 inclusive.

88. The Microsoft Defendants deny that Plaintiff or any putative class is entitled to any of the relief requested.

89. To the extent the allegations contained in this paragraph relate solely to claims that have been dismissed, no response is required. Paragraph 89 also purports to characterize this action, characterize statutes, and asserts legal conclusions, to which no responses are required. The Microsoft Defendants deny any remaining allegations in Paragraph 89 and further deny that Plaintiff or any putative class is entitled to any of the relief requested.

AS TO “DEMAND FOR RELIEF”

The Microsoft Defendants deny any allegations in the Demand for Relief and further deny that Plaintiff or any putative class is entitled to any of the relief requested.

GENERAL DENIAL

The Microsoft Defendants deny all allegations in the Amended Complaint that have not been expressly admitted in this Answer.

AFFIRMATIVE DEFENSES

The Microsoft Defendants assert the following affirmative and other defenses. In asserting these defenses, the Microsoft Defendants do not assume the burden of proof or the burden of persuasion with respect to any issue as to which applicable law places the burden of proof upon Plaintiff. In addition, the Microsoft Defendants specifically and expressly reserve the right to amend these defenses, or to add additional defenses, based upon legal theories, facts and

1 circumstances that may or will be discovered and/or further legal analysis of Plaintiff's positions
2 in this litigation.

3 **FIRST AFFIRMATIVE DEFENSE**

4 Plaintiff's claims and the claims of any putative class members are barred, in whole or in
5 part, on the ground that the Amended Complaint fails to state a claim for relief against the
6 Defendants. By way of example, Claim one should be dismissed because it cannot be reconciled
7 with the Plan terms. Plaintiff is not entitled to injunctive relief because Plaintiff lacks Article III
8 standing to seek an injunction.

9 **SECOND AFFIRMATIVE DEFENSE**

10 Plaintiff's claims and those of putative class members are barred, in whole or in part, to
11 the extent that they lack Article III standing. By way of example only, any claims are barred to
12 the extent a Plan member did not pay out of pocket or suffer any concrete injury as a result of the
13 challenged denials of coverage.

14 **THIRD AFFIRMATIVE DEFENSE**

15 Plaintiff's claims and those of putative class members are barred, in whole or in part, to
16 the extent that they lack statutory standing. By way of example only, any claims are barred to
17 the extent that any Plan member assigned away his or her benefits, or to the extent the Plan
18 member is otherwise not a proper plaintiff under ERISA.

19 **FOURTH AFFIRMATIVE DEFENSE**

20 Plaintiff's claims and those of putative class members are barred, in whole or in part, on
21 the ground that the challenged denials of coverage were proper and/or did not constitute an abuse
22 of discretion under the terms of the Plan.

23 **FIFTH AFFIRMATIVE DEFENSE**

24 Plaintiff's claims and those of putative class members are barred, in whole or in part, to
25 the extent that Microsoft is not a proper defendant for the claims being asserted.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims and those of putative class members are barred, in whole or in part, to the extent they seek to recover amounts charged by wilderness therapy programs or others for services that were improper, unreasonable, or excessive, or otherwise contrary to the relevant Plan terms or other law.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims and those of putative class members are barred, in whole or in part, to the extent they seek to recover amounts charged by wilderness therapy programs or others that are improper, unreasonable, or excessive for the services they rendered to Plan members, or otherwise contrary to the relevant Plan terms or other law.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims and those of putative class members are barred, in whole or in part, to the extent they failed to satisfy any prerequisites, conditions, or obligations under the relevant Plan terms or other law. By way of example only, any claims for benefits are barred to the extent that the Plan member did not submit a claim for benefits within the required time period under the terms of the Plan.

NINTH AFFIRMATIVE DEFENSE

The claims of putative class members are barred, in whole or in part, to the extent they failed to exhaust the available administrative and/or contractual appeals process under their plan before pursuing claims through this litigation.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims and those of putative class members are barred, in whole or in part, to the extent that the applicable statute of limitations has lapsed.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims and those of putative class members are barred, in whole or in part, to the extent that any contractual limitations period has lapsed.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims and those of putative class members are barred, in whole or in part, to the extent that the equitable doctrines of waiver, estoppel, laches, and/or unclean hands apply.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's and the putative class members' claims are barred, in whole or in part, because the damages sought are speculative and remote and impossible to ascertain.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims and those of putative class members are barred to the extent that they have insurance coverage through another plan or policy that is primarily or otherwise responsible for the benefits they seek.

FIFTEENTH AFFIRMATIVE DEFENSE

The Microsoft Defendants expressly and specifically reserve the right to add, abandon, and/or modify defenses based upon legal theories, facts, and circumstances that may or will be divulged through discovery and/or further legal analysis of Plaintiff's position in this litigation.

WHEREFORE, Microsoft respectfully requests that the Court:

- (a) Dismiss Plaintiff's claims with prejudice;
- (b) Deny Plaintiff's prayers for relief;
- (c) Award Defendants the costs of this suit, including reasonable attorneys' fees; and
- (d) Award Defendants any other such relief as the Court may deem appropriate.

DATED this 19th day of July, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on July 19, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 19th day of July, 2018.

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